

EXHIBIT 16

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES,) 1:23-cv-00108-LMB-JFA
et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 GOOGLE LLC,)
)
 Defendants.)

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VIDEOTAPED 30(b)(6) DEPOSITION OF
UNITED STATES DEPARTMENT OF VETERANS AFFAIRS

through the testimony of

KOBY SMITH

August 31, 2023

4:09 p.m.

Reported by: Bonnie L. Russo
Job No. CS6074125

Veritext Legal Solutions

800-567-8658

973-410-4098

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<p style="text-align: right;">Page 2</p> <p>1 Videotaped 30(b)(6 Deposition of United States</p> <p>2 Department of Veterans Affairs through the</p> <p>3 testimony of Koby South held at:</p> <p>4</p> <p>5</p> <p>6 Paul Weiss Rifkind Wharton & Garrison, LLP</p> <p>7 2001 K Street, N.W.</p> <p>8 Washington, D.C.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 Pursuant to Notice, when were present on behalf</p> <p>19 of the respective parties:</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p>1 I N D E X</p> <p>2 EXAMINATION OF KOBY SOUTH PAGE</p> <p>3 BY MS. MORGAN 7</p> <p>4</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 SEAN CARMAN, ESQUIRE</p> <p>4 VICTOR LIU, ESQUIRE</p> <p>5 ALVIN CHU, ESQUIRE</p> <p>6 KATHERINE E. CLEMONS, ESQUIRE</p> <p>7 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>8 450 Fifth Street, N.W., Suite 700</p> <p>9 Washington, D.C. 20530</p> <p>10 sean.carman@usdoj.gov</p> <p>11 victor.liu@usdoj.gov</p> <p>12 alvin.chu@usdoj.gov</p> <p>13 katherine.clemons@usdoj.gov</p> <p>14</p> <p>15 On behalf of the Defendant:</p> <p>16 ERIN J. MORGAN, ESQUIRE</p> <p>17 PAUL, WEISS, RIFKIND,</p> <p>18 WHARTON & GARRISON, LLP</p> <p>19 1285 Avenue of the Americas</p> <p>20 New York, New York 10019</p> <p>21 ejmorgan@paulweiss.com</p> <p>22 -and-</p> <p>HEATHER MILLIGAN, ESQUIRE</p> <p>ANNELISE CORRIVEAU, ESQUIRE</p> <p>MARTHA L. GOODMAN, ESQUIRE (Via Remote)</p> <p>PAUL, WEISS, RIFKIND,</p> <p>WHARTON & GARRISON, LLP</p> <p>2001 K Street, N.W.</p> <p>Washington, D.C. 20006</p> <p>hmilligan@paulweiss.com</p> <p>acorriveau@paulweiss.com</p> <p>mgoodman@paulweiss.com</p> <p>Also Present:</p> <p>Orson Braithwaite, Videographer</p> <p>Laura Reass, Department of Veterans Affairs</p>	<p style="text-align: right;">Page 5</p> <p>1 P R O C E E D I N G S</p> <p>2 (4:09 p.m.)</p> <p>3</p> <p>4 THE VIDEOGRAPHER: We are going on</p> <p>5 the record at 4:09 p.m. on August 31, 2023.</p> <p>6 This is Media Unit 1 of the</p> <p>7 video-recorded deposition of Mr. Koby South in</p> <p>8 the matter of United States, et al., versus</p> <p>9 Google LLC filed in the United States District</p> <p>10 Court, Eastern District of Virginia, Alexandria</p> <p>11 Division, Case No. 1:23-cv-00108-LMB-JFA.</p> <p>12 My name is Orson Braithwaite</p> <p>13 representing Veritext Legal Solutions, and I am</p> <p>14 the videographer. The court reporter is Bonnie</p> <p>15 Russo from the firm Veritext Legal Solutions.</p> <p>16 Counsel will now state their</p> <p>17 appearances and affiliations for the record.</p> <p>18 MS. MORGAN: I'm Erin Morgan. I'm</p> <p>19 from the law firm Paul Weiss, and we represent</p> <p>20 Google. I am here with my two colleagues,</p> <p>21 Heather Milligan and Annelise Corriveau.</p> <p>22 MR. CARMAN: Sean Carman for the</p>

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<p style="text-align: right;">Page 74</p> <p>1 MS. MORGAN: We can address that off</p> <p>2 the record. I don't think that's right.</p> <p>3 BY MS. MORGAN:</p> <p>4 Q. We talked in your 30(b)(1)</p> <p>5 deposition about when you learned about the</p> <p>6 lawsuit that Google filed in the -- sorry,</p> <p>7 strike that.</p> <p>8 We talked in your 30(b)(1)</p> <p>9 deposition about when you personally learned</p> <p>10 about the lawsuit the Department of Justice</p> <p>11 filed against Google in the Eastern District of</p> <p>12 Virginia.</p> <p>13 Do you remember that?</p> <p>14 A. Yes.</p> <p>15 Q. I want to talk to you in your role</p> <p>16 as the representative of the Department of</p> <p>17 Veterans Affairs about when the Department of</p> <p>18 Veterans Affairs learned of that lawsuit.</p> <p>19 Do you know when that was?</p> <p>20 A. February of this year.</p> <p>21 Q. At the time that the Department of</p> <p>22 Veterans Affairs learned that the Department of</p>	<p style="text-align: right;">Page 76</p> <p>1 again and then you can make your objection</p> <p>2 again.</p> <p>3 BY MS. MORGAN:</p> <p>4 Q. Do you know if anyone from the</p> <p>5 Department of Justice spoke to anyone inside</p> <p>6 the Department of Veterans Affairs in advance</p> <p>7 of filing the lawsuit against Google in the</p> <p>8 Eastern District of Virginia?</p> <p>9 MR. CARMAN: Objection. Calls --</p> <p>10 objection. Because it seeks communications</p> <p>11 between attorneys at the Department of Justice</p> <p>12 and Veterans Administration and others, so I</p> <p>13 instruct you not to answer to the extent your</p> <p>14 answer would reveal communications between</p> <p>15 lawyers at the Department of Justice and</p> <p>16 individuals at the VA.</p> <p>17 BY MS. MORGAN:</p> <p>18 Q. Were you prepared to testify today</p> <p>19 about your involvement in -- the Department of</p> <p>20 Veterans Affairs' involvement in communications</p> <p>21 -- sorry, scratch that.</p> <p>22 Were you prepared to testify today</p>
<p style="text-align: right;">Page 75</p> <p>1 Justice had filed a lawsuit in the Eastern</p> <p>2 District of Virginia against Google, had that</p> <p>3 lawsuit already been filed?</p> <p>4 A. I don't know the specific date when</p> <p>5 the lawsuit was filed.</p> <p>6 Q. But in your prep for this deposition</p> <p>7 as the representative of the VA, you understand</p> <p>8 that they learned -- that the VA learned of the</p> <p>9 lawsuit in February?</p> <p>10 A. Correct.</p> <p>11 Q. Do you know if anyone from the</p> <p>12 Department of Justice spoke to anyone inside</p> <p>13 the Department of Veterans Affairs before</p> <p>14 filing the lawsuit?</p> <p>15 MR. CARMAN: So I object to the</p> <p>16 extent this calls for attorney-client</p> <p>17 communication and instruct you in your answer</p> <p>18 not to disclose any conversations between</p> <p>19 lawyers from the Department of Justice and the</p> <p>20 Veterans Administration.</p> <p>21 MS. MORGAN: I was not done asking</p> <p>22 the question, so I'm going to say the question</p>	<p style="text-align: right;">Page 77</p> <p>1 about the Department of Veterans Affairs, the</p> <p>2 circumstances that led to the Department of</p> <p>3 Veterans Affairs to be involved in the lawsuit,</p> <p>4 including any efforts that the Department of</p> <p>5 Veterans Affairs undertook to investigate the</p> <p>6 Department of Justice's claims?</p> <p>7 Were you prepared to testify about</p> <p>8 how the Department of Veterans Affairs got</p> <p>9 involved in the lawsuit today?</p> <p>10 MR. CARMAN: Objection as to form.</p> <p>11 THE WITNESS: I don't -- I don't</p> <p>12 understand the question.</p> <p>13 MS MORGAN: It's a topic that was</p> <p>14 agreed upon in this notice, that the Department</p> <p>15 of Veterans Affairs would testify about the</p> <p>16 circumstances that led the department to be</p> <p>17 involved in this lawsuit, and I understand you</p> <p>18 now to be saying that he can't testify on that</p> <p>19 topic because it's privileged. Am I right</p> <p>20 about that?</p> <p>21 MR. CARMAN: No, that is not -- that</p> <p>22 is not correct. He testified as to when the</p>

20 (Pages 74 - 77)

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<p style="text-align: right;">Page 78</p> <p>1 Veterans Administration learned of the lawsuit</p> <p>2 and that was an answer to your question about</p> <p>3 the circumstances that led VA to be involved in</p> <p>4 the lawsuit.</p> <p>5 BY MS. MORGAN:</p> <p>6 Q. Tell me everything you know that is</p> <p>7 not from a lawyer, about the circumstances that</p> <p>8 led the Department of Veterans Affairs to be</p> <p>9 involved in this lawsuit.</p> <p>10 MR. CARMAN: Okay. So I will have</p> <p>11 -- object again to attorney-client privilege.</p> <p>12 You can answer.</p> <p>13 THE WITNESS: I do not know anything</p> <p>14 other than what I have discussed with -- with</p> <p>15 lawyers related to the Department of Veterans</p> <p>16 Affairs being involved in this lawsuit.</p> <p>17 BY MS. MORGAN:</p> <p>18 Q. Is it the Department of Justice's</p> <p>19 position that the only responsive information</p> <p>20 to noticed Topic No. 30 is the date on which</p> <p>21 the Department of Veterans Affairs learned of</p> <p>22 the lawsuit?</p>	<p style="text-align: right;">Page 80</p> <p>1 dates of such conversation between DOJ and VA</p> <p>2 occurred, and the people involved in those</p> <p>3 conversations, but we will fall back on our</p> <p>4 objection or we will reiterate our objection</p> <p>5 about not disclosing the substance of those</p> <p>6 conversations or any attorney work product.</p> <p>7 And then with respect to Topic 26 in</p> <p>8 the notice, I wanted to put on the record that</p> <p>9 we have -- our understanding is, we have agreed</p> <p>10 with Google that questioning along this topic</p> <p>11 will be subject to our standing objection, that</p> <p>12 this topic is not an appropriate topic for a</p> <p>13 30(b)(6) inquiry, because the United States is</p> <p>14 going to rely on expert testimony to</p> <p>15 demonstrate these facts.</p> <p>16 MS. MORGAN: Understood. And</p> <p>17 Google, I think not surprisingly, does not</p> <p>18 agree with the Department of Justice's</p> <p>19 position, reserves all rights in that regard,</p> <p>20 but we understand how you want to proceed.</p> <p>21 MR. CARMAN: Thank you.</p> <p>22 BY MS. MORGAN:</p>
<p style="text-align: right;">Page 79</p> <p>1 MR. CARMAN: Before we answer that</p> <p>2 question, can I confer with my colleague.</p> <p>3 MS. MORGAN: Sure. Let's go off the</p> <p>4 record.</p> <p>5 MR. CARMAN: Okay.</p> <p>6 THE VIDEOGRAPHER: The time is</p> <p>7 p.m. We are off the record.</p> <p>8 (A short recess was taken.)</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 p.m. This begins Unit 2. We are on the</p> <p>11 record.</p> <p>12 MR. CARMAN: So following --</p> <p>13 following our break, I wanted to clarify two</p> <p>14 things. The first is that with regard to</p> <p>15 questions to Mr. South about -- sorry.</p> <p>16 This is -- Topic 30, the</p> <p>17 circumstances that led you, capital Y-O-U, to</p> <p>18 be involved in the lawsuit including any</p> <p>19 efforts you undertook to investigate your</p> <p>20 claim.</p> <p>21 The United States is taking the</p> <p>22 position that Mr. South can testify about the</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Mr. South, you testified that the</p> <p>2 Department of Veterans Affairs learned of the</p> <p>3 Department of Justice's lawsuit against Google</p> <p>4 in February of 2023.</p> <p>5 Do you remember that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know who was involved in that</p> <p>8 conversation from the Department of Veterans</p> <p>9 Affairs?</p> <p>10 A. I don't know about the initial</p> <p>11 communication that was made. There was a</p> <p>12 meeting established later that involved the</p> <p>13 Department of Justice and, you know, the</p> <p>14 Department of Veteran Affairs.</p> <p>15 It was during that same month,</p> <p>16 February 2023. I hadn't -- unfortunately, had</p> <p>17 some notes on this and I misplaced them, so</p> <p>18 some of the names I have are just going to be</p> <p>19 first names.</p> <p>20 From the VA, it was definitely</p> <p>21 Laura. And Jason Fergosa, F-E-R-G-O-S-A, I</p> <p>22 think. From the Department of Justice, I think</p>

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<div>Page 90</div> <div><div>1</div><div>the record that Google was informed last night</div><div>2</div><div>by the Department of Justice that there were</div><div>3</div><div>several thousand documents of Mr. South's that</div><div>4</div><div>were not produced in advance of this</div><div>5</div><div>deposition.</div><div>6</div><div>So we reserve the right to reopen</div><div>7</div><div>the deposition should that become necessary</div><div>8</div><div>based on the documents we reviewed.</div><div>9</div><div>I will also reserve the right to</div><div>10</div><div>reopen the deposition as necessary on the</div><div>11</div><div>topics on which Mr. South is not prepared to</div><div>12</div><div>testify, including certain campaigns that were</div><div>13</div><div>listed earlier in the deposition and whether</div><div>14</div><div>Google products were used in connection with</div><div>15</div><div>other campaigns.</div><div>16</div><div>And I am going to -- and also, I'll</div><div>17</div><div>reserve rights on the Court's determination</div><div>18</div><div>about standing privilege objection.</div><div>19</div><div>In other words, I will reserve the</div><div>20</div><div>balance of my time for after the department</div><div>21</div><div>asks any questions if it wants to do that.</div><div>22</div><div>MR. CARMAN: Okay. Can we take a</div></div>	<div>Page 92</div> <div><div>1</div><div>CERTIFICATE OF NOTARY PUBLIC</div><div>2</div><div>I, Bonnie L. Russo, the officer before</div><div>3</div><div>whom the foregoing deposition was taken, do</div><div>4</div><div>hereby certify that the witness whose testimony</div><div>5</div><div>appears in the foregoing deposition was duly</div><div>6</div><div>sworn by me; that the testimony of said witness</div><div>7</div><div>was taken by me in shorthand and thereafter</div><div>8</div><div>reduced to computerized transcription under my</div><div>9</div><div>direction; that said deposition is a true</div><div>10</div><div>record of the testimony given by said witness;</div><div>11</div><div>that I am neither counsel for, related to, nor</div><div>12</div><div>employed by any of the parties to the action in</div><div>13</div><div>which this deposition was taken; and further,</div><div>14</div><div>that I am not a relative or employee of any</div><div>15</div><div>attorney or counsel employed by the parties</div><div>16</div><div>hereto, nor financially or otherwise interested</div><div>17</div><div>in the outcome of the action.</div><div>18</div><div><div><div><div></div><div>Bonnie L. Russo</div></div></div></div><div>19</div><div>Notary Public in and for</div><div>20</div><div>the District of Columbia</div><div>21</div><div>My Commission expires: August 14, 2025.</div><div>22</div></div>																																			
<div>Page 91</div> <div><div>1</div><div>brief -- just a brief break?</div><div>2</div><div>MS. MORGAN: Of course.</div><div>3</div><div>MR. CARMAN: And then we will</div><div>4</div><div>resume. I don't think we even have to leave</div><div>5</div><div>the room. But we can go off the record.</div><div>6</div><div>THE VIDEOGRAPHER: The time is</div><div>7</div><div>p.m. Off the record.</div><div>8</div><div>(A short recess was taken.)</div><div>9</div><div>THE VIDEOGRAPHER: The time is</div><div>10</div><div>p.m. On the record.</div><div>11</div><div>MR. CARMAN: Okay. We just want to</div><div>12</div><div>say for the record that we don't agree that</div><div>13</div><div>there is a record in this deposition that</div><div>14</div><div>demonstrates that Mr. South was not prepared to</div><div>15</div><div>testify on any topic in the deposition notice,</div><div>16</div><div>and with that, we have no further questions.</div><div>17</div><div>MS. MORGAN: Great. I think we can</div><div>18</div><div>close the record.</div><div>19</div><div>THE VIDEOGRAPHER: The time is</div><div>20</div><div>p.m. Off the record.</div><div>21</div><div>(Whereupon, the proceeding was</div><div>22</div><div>concluded at 5:44 p.m.)</div></div>	<div>Page 93</div> <div><div>1</div><div>ACKNOWLEDGMENT OF DEPONENT</div><div>2</div><div>I, KOBY SOUTH, do hereby certify that I have</div><div>3</div><div>read the foregoing transcript of my testimony</div><div>4</div><div>taken on 8/31/23, and further certify that it</div><div>5</div><div>is a true and accurate record of my testimony</div><div>6</div><div>(with the exception of the corrections listed</div><div>7</div><div>below):</div><div>8</div><div><table><tr><td>Page</td><td>Line</td><td>Correction</td></tr><tr><td>9</td><td>___</td><td>___</td></tr><tr><td>10</td><td>___</td><td>___</td></tr><tr><td>11</td><td>___</td><td>___</td></tr><tr><td>12</td><td>___</td><td>___</td></tr><tr><td>13</td><td>___</td><td>___</td></tr><tr><td>14</td><td>___</td><td>___</td></tr><tr><td>15</td><td>___</td><td>___</td></tr><tr><td>16</td><td>___</td><td>___</td></tr><tr><td>17</td><td>___</td><td>___</td></tr><tr><td>18</td><td>___</td><td>___</td></tr></table></div><div>19</div><div>KOBY SOUTH</div><div>20</div><div>SUBSCRIBED AND SWORN TO BEFORE ME</div><div>21</div><div>THIS ____ DAY OF _____, 2023.</div><div>22</div><div><table><tr><td>(NOTARY PUBLIC)</td><td>MY COMMISSION EXPIRES:</td></tr></table></div><div>Job No. CS6074125</div></div>	Page	Line	Correction	9	___	___	10	___	___	11	___	___	12	___	___	13	___	___	14	___	___	15	___	___	16	___	___	17	___	___	18	___	___	(NOTARY PUBLIC)	MY COMMISSION EXPIRES:
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